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ABSTRACT

In 1971 the California Supreme Court published America's most significant court decision in recent decades affecting a state's program of funding the operation of its public schools. This was followed by court decisions in Minnesota, Texas, and New Jersey. Lawsuits based on the California case of Serrano v. Priest are being filed in courts throughout the country. The background of these court decisions is summarized. These lawsuits and decisions are anchored in the constitutional concept of equal protection that requires that the federal and state governments not discriminate unfairly between classes of people. Ten practical questions and their related issues that school administrators must deal with in the months and years ahead are discussed. (Author/MLF)

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Chief Justice Wright,
The California Supreme Court
And School Finance:

Has the Fourteenth Done It Again?

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Many people believe the reform of the public school financing system ordered by the judiciary is a California phenomenon alone. Such is *not* the case. The pressures for an overhauling of the methods by which America pays for the operation of its public schools have been building throughout our nation for many years. And it was in 1971 in California where occurred the coming together of the *idea* for public school finance reform with the *time* when it appeared crystal-clear that such reform was absolutely indispensable to the preservation of the vibrant democracy of our nation.

The tide began in the West last summer, and within months it had rolled over Minnesota and Texas into New Jersey. And lawsuits based on the California case of *Serrano v. Priest* even now are being filed in courts throughout the country. These lawsuits, as in *Serrano,* are anchored in the equal protection clause of the Fourteenth Amendment to the United States Constitution. Essentially, the constitutional concept of equal protection requires that the federal and state governments *not* discriminate unfairly between classes of people. It envisions all people's being treated by the law in the same manner, unless a strong showing can be made that differential treatment is justified to achieve a valid and significant goal of

the nation or state. It was within this concept that the "western tide" of public school finance reform began when, on August 30, 1971, the California Supreme Court published America's most significant court decision in recent decades affecting a state's program of funding the operation of its public schools.

In that case—*Serrano v. Priest*—several Los Angeles County public school children and their parents instituted a class action against various state and local county officials whose duties touch upon the apportioning, disbursing, accounting and auditing of state financial aid that helps support the public schools. The plaintiffs alleged *three* causes of action:

1. That, as a result of the public school financing law in California (which relies heavily on local property taxes and thereby causes large disparities among individual school districts in the amount of revenue available per pupil to support the educational program), there are substantial disparities in the quality and extent of educational opportunities among the various school districts in the state generally, and, in particular, that the educational opportunities open to the plaintiffs are "substantially inferior" to those that exist in other districts in the state. All of this, the plaintiffs contend, is repugnant to the equal protection clause of the United States Constitution and the California Constitution, including the provision requiring "a system of common schools" in the state
2. That, as a result of the public school financing plan in California, the plaintiffs are required to pay a higher local real property tax rate than taxpayers in many other school districts to obtain the same or lesser educational opportunities
3. That there is a "real controversy" between the plaintiffs and the defendant state and local school officials as to the "validity and constitutionality of the [public school] financing scheme under the Fourteenth Amendment of the U.S. Constitution and under the California Constitution."

The plaintiffs requested that the court declare the public school financing law in California unconstitutional, order the reallocation of public school funds and retain jurisdiction so that if the state legislature fails to restructure the public school financing law in light of the plaintiffs' demands, the court could do the job itself.

The defendants *demurred* to the plaintiffs' three alleged causes of action in the Los Angeles Superior Court. The lower court held that, in the form in which the plaintiffs' complaint was presented to the court, it did *not* state a cause of action and, therefore, no trial was warranted. The plaintiffs appealed.

At the outset of its opinion, the California Supreme Court defined the general overriding issue of the case as "whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the Fourteenth Amendment."

In examining the California public school financing law, the court observed that over 90 percent of public school funds are derived from local real property taxes and aid from the State School Fund. Of these two, the court said, the local property tax is "by far the major source of school revenue." And this locally produced revenue is primarily "a function of the value of the realty within a particular school district, coupled with the willingness of the district's residents to tax themselves for education." As to the State School Fund portion of public school revenue, the court found that attempts to establish a parity in funds available to local districts through grants of "equalization aid" and "supplemental aid," in addition to "basic state aid," merely "tempered" the disparities that resulted from vast variations in local real property assessed valuation throughout California, and "wide differentials remain in the revenue available to individual districts and, consequently, in the level of educational expenditures." Therefore, the court concluded that "the state grants are inadequate to offset the inequalities inherent in a financing system

based on widely varying local tax bases." In fact, the court declared that "basic state aid," which is distributed to all school districts on a uniform per pupil basis regardless of a district's wealth, "actually widens the gap between rich and poor districts."

In view of this background of the public school financing plan in California, the court analyzed the plaintiffs' alleged causes of action. The court disposed first of the plaintiffs' claim that the California Constitution's requirement that the legislature provide "a system of common schools" means "one" such system and, therefore, mandates uniform educational *expenditures* for all local school districts. The court gave short shrift to this theory of the plaintiffs when it held:

> we have never interpreted the constitutional provision [to provide for "a system of common schools"] to require equal school spending; we have ruled only that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade.

The court then addressed itself to what it called the "chief contention" undergirding the plaintiffs' complaint—namely, "that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution." The court said that the United States Supreme Court measures the validity of state legislation that concerns either "suspect classifications" or "fundamental interests" according to a strict constitutional standard—that is, any state law which purports to establish "classifications" affecting people, such as the public school financing laws in which it appears that not all people are *equally* benefitted, is subject to a strict measurement against the United States Constitution's equal protection clause. Similarly, any state law that involves a "fundamental interest" also is subject to such measurement. In this constitutional measuring process, the state has the burden to prove:

1. That the state has a "*compelling interest*" that justifies the law; and

2. That the particular manner in which the law treats people differently is *necessary* to further the law's valid purposes.

The court first considered the California public school financing law on the basis that it is a "suspect classification." The court affirmed as "irrefutable" the plaintiffs' contention that the school financing law is a "classification" based on wealth. While the court conceded that the law, through its grants of "basic" and "equalization" aid, "partially alleviates" the considerable differences in the wealth of local districts throughout the state, the court nevertheless specifically recognized that "the system as a whole generates school revenue in proportion to the wealth of the individual district." The court continued by declaring that

> discrimination on the basis of district wealth is . . . invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.

The court found *no* substance to the plea of the defendants that, if there were any discrimination in public school financing, it was "unintentional." Finally, the court said: "In sum, we are of the view that the school financing system discriminates on the basis of the wealth of a district and its residents."

The court then turned to the issue of whether or not local public education is a "fundamental interest." It described education as playing an "indispensable role" in the modern industrialized state. The court identified the "two significant aspects" of education:

> first, education is a major determinant of an individual's chances for economic and social success in our competitive society;
> second, education is a unique influence

on a child's development as a citizen and his participation in political and community life.

In more than six pages of eloquent testimonial to the crucial importance of education in our society today, the court made manifest its view that public education indeed is a "fundamental interest."

Having concluded that the California public school financing law is subject to being measured against the equal protection clause of the United States Constitution because education is a "fundamental interest" and because the law providing for the financing of the public schools in California is based largely on local district wealth and thereby discriminates against the people of less wealthy districts, the court addressed itself to the issue of whether or not such law was "necessary" to accomplish a compelling state interest.

The defendant state and local government officials argued that the public school financing law was necessary to strengthen and encourage local responsibility for control of public education. In *rejecting* this argument, the court said:

> so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.

The court also "unhesitatingly" rejected the argument of the defendants that

> if the equal protection clause commands that the relative wealth of school districts may not determine the quality of public education, it must be deemed to direct the same command to all governmental entities in respect to all tax-supported public services. . . .

The court said:

> We cannot share defendant's unreasoned apprehensions of such dire con-

sequences from our holding today. Although we intimate no views on other governmental services, we are satisfied that [education's] uniqueness among public activities clearly demonstrates that *education* must respond to the command of the equal protection clause [emphasis supplied by the court].

In view of this, the court held:

> The California public school financing system . . . touches upon a fundamental interest. . . . [and] conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. . . . [and, therefore,] it denies to the plaintiffs and other similarly situated the equal protection of the laws.

Less than two months later, on October 21, 1971, the court issued a "modification of opinion" (*Serrano v. Priest,* 5C3d 584) in which it declared:

> We emphasize, that our decision is not a final judgment on the merits. We deem it appropriate to point out for the benefit of the trial court on remand . . . that if, after further proceedings, that court should enter final judgment determining that the existing system of public school financing is unconstitutional and invalidating said system in whole or in part, it may properly provide for the enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing.
>
> . . . a determination that an existing plan of governmental operation denies equal protection does not necessarily require invalidation of past acts undertaken pursuant to that plan or an immediate implementation of a constitutionally valid substitute. Obviously, any judgment invalidating the existing system of public school financing should make clear that the existing system is to remain operable until an appropriate new system, which is not violative of equal protection of the

laws, can be put into effect.

Less than six weeks after the California Supreme Court decided *Serrano,* the federal district court in Minneapolis filed its opinion in *Dusartz v. Hatfield.* That court approved *Serrano* and declared the Minnesota method of financing its public schools, which the court said was similar to California's, unconstitutional because it violated the equal protection clause of the Fourteenth Amendment. The Minnesota district court said that "plainly put, the rule [in *Serrano*] is that the level of spending for a child's education may not be a function of wealth other than the wealth of the state as a whole." The court, picking up a reference in *Serrano,* called this the "principle of fiscal neutrality." The court found this principle being ignored by the Minnesota public school financing laws because the variations in wealth among the school districts of the state were the result of state action in establishing school district boundaries. The court remarked:

> This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall *de facto* upon those poor families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.

In rebuttal to the argument that the present Minnesota plan for financing public school operations could be justified because it promoted local control of local public education, the court declared:

> rather than reposing in each school district the economic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low [with high taxes] while others will spend high [with low taxes]. To promote such an erratic dispersal of privilege and burden on a theory of local control of spending would be quite impossible.

About six weeks later, on December 23, 1971, the federal court in San Antonio, Texas, issued its decision *(Rodriguez et al v. San Antonio)* striking down the Texas law governing the funding of that state's public school system. Again, the court's decision was based on a violation of the equal protection clause of the Fourteenth Amendment. The court cited with approval both *Serrano* in California and *Dusartz* in Minnesota. The court labeled educational financing of poor school districts in Texas as "a tax more, spend less system." To correct this invalid, unequal treatment of poor school districts, the state must observe the "principle of fiscal neutrality"—that is, the court declared that "the State may adopt the financial scheme desired so long as the variations in wealth among the governmentally chosen units do not affect spending for the education of any child."

Finally, in a variation of the theme set by *Serrano* and *Dusartz,* the court unequivocally rejected the argument that the state may discriminate in its apportionment of money to support the public schools so long as federal funds equalize the differences. Quoting from a public school pupil racial integration lawsuit, the court noted that the *federal* aid to education statutes

> are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the [school] Board [at the local district level] is otherwise responsible.

Further support for this view, the court said, was a series of decisions prohibiting deductions from state aid for school districts receiving "impact area" aid under P.L. 874 to help fund the local public schools that enroll the children of families serving the federal government in the civil service and the military or naval forces of the United States.

The last case (in what ultimately promises to be a vast sea of cases nationwide) that we will consider is *Robinson v. Cahill,*

decided by a New Jersey state superior court on January 19, 1972. In its scholarly 77-page opinion, the New Jersey trial court cited approvingly the predecessor cases of *Serrano, Dusanz.* and *Rodriguez.* The New Jersey trial court expanded upon the references to the impact of public school financing laws on pupils from racial minority groups when it commented that

> the poorer communities must serve people of greater needs because they have large numbers of dependent minorities, that is blacks and those whose origin in Puerto Rican or Cuban . . . social isolation aggravates the impact of economic differences in Education.

Significantly, the New Jersey decision also mentioned school buildings, equipment, textbooks and libraries as other "input factors" to prove the correlation between wealth and the quality of such facilities "and that severe inadequacies exist in many poor districts."

So the "western tide" of public school financing reform has, in a period of less than five months, inundated the nation. With the background of these court decisions in mind, let us consider ten *practical* questions (and their related issues) with which you as school people must deal in the months and years ahead.

1. **Will the courts rewrite the nation's state public school financing laws?**
The answer is unequivocally No! The traditional function of the courts—that of interpreting the federal and state constitutions—has been performed. In all four of the cases, the courts have been unanimous in rejecting any role as a super-legislature; they have recognized the political complexities and technical intricacies of devising a fair plan to pay for the operation of the local public schools. And they all have provided for a reasonable period of time for the legislatures to get the job done. As a guarantee that the job in fact will get done, some of the courts have retained jurisdiction to review the amendment efforts of the legislatures. But, make no mistake about it, the legislatures will be the real focus for the law-change action.

2. **How long may the legislatures take in changing the state school finance laws?**
The courts in all four of the cases recognize that it will take time to revise the laws which have been accepted as valid for generations. Nobody, including the courts, really knows how long the job will take. The courts will be reasonable. They have the practical tendency toward specifying dates certain. But, if conditions are such that the legislatures can show a need for additional time, the courts will grant appropriate and reasonable extensions. However, there is a point at which delay becomes intolerable, and the courts will then proceed, by contempt proceedings or injunction, to force more expeditious revision of the offending laws. I believe that the courts have learned a great deal about, and have acquired considerable sophistication in dealing with, the genius which governmental units have shown in skirting effective action to comply with court orders in the plethora of school racial integration cases, both North and South, since 1954. The courts may be expected to bring their enforcement expertise into action in an effective way if legislative delay exhausts their patience.

3. **What guidelines will the legislatures follow in enacting new public school finance laws?**
There are two fundamental precepts that the legislatures will observe:

1. The public education of a child may not depend upon wealth other than the wealth of the state as a whole. Public education may not be conditioned upon the wealth of a neighborhood, city or region of the state: it is a state function and may be based only upon the wealth of the entire state. In short, the "principle of fiscal neutrality" will be incorporated into every page and paragraph of the new school finance laws to guarantee that the tax revenue to support public school operation will be available to all school districts on an equal basis throughout the state. If the new legislation authorizes some form of local taxation, the local tax rate levied in a public school district serving a poor area must either generate the same amount of tax dollars as it would in a rich district or be supplemented by

other tax sources to guarantee that the same amount of revenue will be available to educate the children in the public schools of both places. In such cases, assessment practices must be uniform throughout the state to prevent the concept of equal levy from degenerating into a sham.

2. In funding public education, the state may set up valid categories in accord with needs, if the fulfillment of such needs serves a legitimate state purpose. Consequently, the state does not have to require all of its school districts to spend the same amount of money or offer identical educational programs because needs vary from neighborhood to neighborhood, city to city and region to region.

And the court cases do *not* prohibit additional expenditures in school districts for—

1. Gifted, retarded or compensatory educational programs.
2. Efforts to racially integrate the schools.
3. Assisting school districts that have special problems, such as those located in large, urban areas.
4. Similar programs designed to meet the special educational needs of children that the state can show are significant and worthy of such special treatment.

4. **Do the court cases require that the state legislatures apportion more total money for public education?**
The answer, regrettably, is No. All that the cases beginning with *Serrano* require is that whatever money there actually *is* be allocated in a fair way, consistent with the equal protection clause of the United States Constitution. In a homey simile, the entire pie is *not* made bigger, but the manner in which the pie is cut must be changed. Naturally, this will be helpful to some districts, but it is at least questionable whether the amount of help forthcoming without any increase in the *total* appropriations for public education will be sufficient to bail out the large cities and the other truly poor school districts. In this context, the cases beginning with *Serrano* could prove to be a fiscal mirage.

5. **Is the real property tax dead as a source**

of revenue to finance public education?
No, the real property tax is still alive; whether or not it is "well" depends upon your viewpoint. In the four court cases, the courts looked at both the local property tax as a source of revenue to support the local public schools and the manner in which the revenue from the local property tax actually is distributed on a statewide basis. The courts found no fault with the local property tax as a source of revenue, but they did declare unconstitutional the unequal way in which such revenue was distributed throughout the state to pay for the public school program.

6. **Do the court cases require that state legislatures find sources of revenue other than the property tax to fund local public education?**
The answer is No. But the eloquent rhetoric and sound reasoning of all four court decisions have served to focus on the underlying problems of paying for equal educational opportunity for all of our children.

7. **Will the court cases require more federal spending to pay for the operation of the local public school districts?**
Not as a matter of law. Public education always has been considered primarily a state function. There would have to be a dramatic change in the court interpretation of the United States Constitution to create a constitutional duty requiring the federal government to pay for local public education. Such a lawsuit would face a mountain of legal precedent against it—but such mountains have been scaled in the past in the whole line of civil rights since 1954. Of course, nothing prevents the Congress, acting on its own initiative, from enacting laws which would provide general dollar support of local public education. In fact, it could be said that in the far-ranging search for more sources of state revenue, the court cases serve as an effective springboard from which to launch a drive for an expanded and changed program of federal support of local public education.

The significance of this aspect of the court decisions was not lost on the United States Senate. As Senator Walter F. Mondale (D-Minn.) said to the Select Committee on

Equal Educational Opportunity when hearings were opened on "inequalities in the financing of public elementary and secondary schools" on September 21, 1971: "The California decision [in *Serrano*] is important both for the Constitutional rights it established and because . . . it marks the beginning of a new era in our nation's efforts to provide quality education for millions of disadvantaged children." Senator Mondale concluded his statement by declaring, in the most direct and plain language possible, that "the States and the Federal government must together assume the major burden in financing education. . . . The need for massive Federal general aid to education is clear."

8. **Does the constitutional principle of equal protection of the Fourteenth Amendment apply to availability of funds to buy school sites and pay for the construction and equipping of school buildings?**
There would seem to be no reason why the financial support of public school *operations* should be treated differently from funding a public school *capital outlay* program. However, *Serrano* concerned itself only with the statutory plan of paying for school district operations. It would take a new lawsuit, or the amendment of pleadings in *Serrano*, to introduce the additional dimension of school buildings. The court would be faced with the task of analyzing the statutory plan by which the state attempts to assist school districts in building schoolhouses. If it were found that such statutes, similar to the so-called "equalizing" statutes designed to equalize funds available to support the operation of the educational program, did *not* in fact "equalize" (as was the case in *Serrano*) then, in my opinion, the court would be hard pressed to differentiate between paying for the *operation* of public schools, on the one hand, and financing public school *capital outlay*, on the other hand.

9. **Is the legal effect of the four court cases retroactive in nature?**
Stated another way, may a school district in California, for example, sue the state using *Serrano* as a lever, and demand back payments for years gone by or a massive payment now to place the school district

where it should have been, had the principles of *Serrano* been observed in recent years? In my opinion, such a lawsuit has virtually no prospects for success. In landmark cases, such as *Serrano*, the courts are loathe to give retroactive effect to their decisions because it would bankrupt the state and plunge it into fiscal chaos. In California, the present, constitutionally invalid system of school finance will remain in effect until amended by the state legislature, as the state supreme court's second opinion clearly implies.

10. **What is the role of school people in the law-change processes initiated by *Serrano*?**

I am convinced that today we are on the threshhold of a complete "rethink" of financing local public education in America. We have, on the one hand, the principles laid down by *Serrano* that, in the language of the California Supreme Court, augur for "further[ing] the cherished idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning." And, on the other hand, we have the growing recognition that dramatic increases in the input of federal and state aid into the support of education, and especially large, urban school districts, should be forthcoming.

Today, more than ever before, public education needs advocates. If the case for the adequate financing of public schools is not successfully presented, then all that *Serrano* and the cases following (which have kindled so much hope) will really stand for in the final analysis is that the poverty, and not the wealth, must be distributed evenly to pay for the public education of our children. In the reconsideration of school finance legislation in the wake of the court cases, many voices that have been silent outside the backrooms of the state legislatures in years past will be heard. Experienced and articulate spokesmen for business, agricultural and property interests, who had no real cause to take school finance reform seriously in the past, will now be forced by *Serrano* to pick up the glove.

School people must be well prepared to fight the people's fight for better education. They must offer alternatives and sub-

stantiate each proposal with solid facts. They must work closely and effectively with the state legislatures and with the Congress. They must be willing to assist the lawyers who introduce the courts in their states to the *Serrano* principles because those lawyers acting as officers of, and advisers to, the courts will function as sentinels to ensure that the letter and the spirit of *Serrano* will be fulfilled in new legislation.

School people must not only keep close tabs on the progress of post-*Serrano* legislation to preclude de facto violations of the "principle of fiscal neutrality," such as statutory formulas that permit variance in local assessment practices when the new legislation still authorizes some form of local taxation, but they also must assume an active role of legislative advocacy. The state legislatures always have been, are now and probably always will be the "master school board" of their respective states. Whether the new public education finance system will involve new forms of tax revenue, centralized or decentralized taxing plans and operational responsibilities (such as a statewide teachers' salary schedule), general increases in total revenue, expansion of the categorical aid concept and a host of other profoundly important policy matters is entirely up to the discretion of the legislatures, working within the skeletal principles laid down by the court cases.

The course that the state legislatures set in this crucial area during the months ahead, in tandem with the tack taken by the Congress, will determine the voyage public education will take down through the years into the twenty-first century. School people must mobilize wide community support for the new dawning of responsibility heralded by *Serrano*. This not only will be helpful to the state legislatures and Congress in setting tomorrow's imperative social priorities of the state and nation, but it also will surely redound to the benefit of America for generations to come.

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